

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

WELLS FARGO BANK,	:	APPEAL NO. C-090360
	:	TRIAL NO. A-0708571
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
BENJAMIN M. MARAAN II,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Wells Fargo Bank (“Wells Fargo”) initiated a foreclosure action against Benjamin Maraán on September 24, 2007, after Maraán had defaulted on a mortgage loan that Wells Fargo had issued. In 2005, Wells Fargo had initiated an earlier foreclosure action against Maraán on the same mortgage, but that case had been dismissed when Maraán filed for bankruptcy. In the present action, Wells Fargo attempted to serve Maraán by using a process server on October 1, 2007. But the process server was unable to reach Maraán on that date and left a notice stating that “I have attempted to contact you on Official Court Business.” The notice further provided a number where the process server could be reached.

On October 2, 2007, the process server successfully served Maraán with a copy of the complaint and filed a return of service with the court. On October 17, 2007, the process server successfully served Maraán with a copy of the amended complaint and again filed a return of service with the court. On each of these dates, the process server

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

additionally provided Maraana with a copy of the notice stating that “I have attempted to contact you on Official Court Business “ and listing a telephone number where the process server could be reached.

Maraan filed a motion to dismiss this action based on the allegation that he had not received service of the complaint. Specifically, Maraana asserted that, on October 2, 2007, he had already left for work at the time that he was allegedly served at his residence. He further asserted that, on October 17, 2007, he had not been home at the time of service, but rather had been visiting an ATM machine.

In addition, both parties filed motions for summary judgment. Following a hearing, a magistrate of the court of common pleas denied Maraana’s motion to dismiss, granted the motion for summary judgment filed by Wells Fargo, and dismissed Maraana’s competing motion. After overruling Maraana’s objections, the trial court adopted the magistrate’s decision and entered judgment for Wells Fargo. Maraana now appeals.

In his first and second assignments of error, Maraana argues that the trial court erred in failing to dismiss the complaint for failure of service under Civ.R. 4(E) and Civ.R. 3(A). We address these assignments together.

Regarding service of process, case law indicates that service “must be reasonably calculated to notify interested parties of the pendency of an action and afford them an opportunity to respond.”<sup>2</sup> Further, “where the plaintiff follows the civil rules, courts presume that service is proper unless the defendant rebuts the presumption with specific evidence.”<sup>3</sup> In this case, Wells Fargo properly followed the rules of civil procedure to obtain service upon Maraana. Civ.R. 4.1(B) allows for service by a process server. Wells Fargo complied with this rule, and service was presumptively proper.

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<sup>2</sup> *Cincinnati Ins. Co. v. Emge* (1997), 124 Ohio App.3d 61, 63, 705 N.E.2d 408.

<sup>3</sup> *Id.*

Maraan attempted to rebut this presumption with a personal affidavit in which he denied receiving service of both the initial and the amended complaints. But “a trial court is not bound to accept the self-serving affidavit or testimony of a defendant that he or she did not receive service. \* \* \* [A] trial court is entitled to make a credibility assessment and disbelieve the defendant’s claim, particularly where the circumstantial evidence of receipt is compelling.”<sup>4</sup> The trial court found the affidavit filed by the process server to be more credible than the affidavit filed by Maraan. On this record, we cannot say that such a determination was in error. We further note that, while the process server testified before the court regarding service of the complaint, Maraan never testified before the court to deny receiving service.

In further support of his argument, Maraan alleges that, had service been properly obtained, the process server would not have left a notice stating that “I have attempted to contact you on Official Court Business” on both October 2 and October 17. We disagree. Despite successfully obtaining service, the process server left this notice to provide Maraan with a telephone number in case he needed to reach the process server or his company in the future. Such action was reasonable.

Service of process was timely and properly obtained, and the trial court did not err in failing to dismiss Maraan’s complaint due to lack of service. The first and second assignments of error are overruled.

In his third assignment of error, Maraan argues that his motion to dismiss should have been granted because, as a result of Well Fargo’s failure to obtain service of process, the trial court had not acquired personal jurisdiction over him. We have already held that service was proper in this case, and we summarily overrule Maraan’s third assignment of error.

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<sup>4</sup> *Infinity Broadcasting, Inc. v. Brewer*, 1st Dist. No. C-020329, 2003-Ohio-1022, ¶18.

In his fourth assignment of error, Maraan argues that the trial court erred in granting Wells Fargo's motion for summary judgment and in denying his competing motion. Maraan first argues that his motion for summary judgment should have been granted because he had not been served with a copy of the complaint. This argument is overruled based on our determination that Maraan was properly served.

Maraan further argues that he was entitled to summary judgment because Wells Fargo had failed to provide him with a notice of default on his mortgage and to give him an opportunity to cure such default. Maraan is incorrect.

Wells Fargo provided Maraan with a notice of default, which stated its intent to accelerate the loan and provided an opportunity to cure, in July 2005. Maraan made no payments on his mortgage loan after that time, and it was not necessary for Wells Fargo to issue a second notice. Maraan was aware that he had defaulted and of the monetary amount needed to cure the default. The record reflects that Wells Fargo properly provided Maraan with the required notice of default, acceleration, and opportunity to cure.

The trial court properly granted Wells Fargo's motion for summary judgment and denied the competing motion filed by Maraan. The fourth assignment of error is overruled. Accordingly, the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on May 12, 2010  
per order of the Court \_\_\_\_\_.  
Presiding Judge